IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

(1)-Writ Petition No. 1305(S/S)2006

Dinesh Singh Tomar S/o Sri Dilip Singh Tomar,
Resident of 7-A, Mohini Road, Dehradun. ---Petitioner.

Vs.

1. State of Uttarakhand through Secretary,
   Department of Education, Uttarakhand,
   Dehradun.
2. Director of Education, Uttarakhand, Dehradun,
3. Uttarakhand Public Service Commission,
   Ayog Bhawan, Gurkul Kangri, Kankhal,
   District Haridwar through its Secretary. - --Respondents.

Sri Sudhansha Dhulia, Sr. Adv. Assisted by Sri Sudhir Singh, learned counsel for the petitioner.
Sri H.M. Raturi, learned Standing Counsel for the State o f Uttarakhand/respondent nos. 1 & 2,
Sri B.D. Kandpal, learned counsel for Public Service Commission/respondent no.3.

AND

(2)-Writ Petition No. 510(S/S)2006

Chatar Singh S/o Sri Rati Ram,
R/o C/o Kedar Singh Chauhan,
General Store, Kalsi Dairy Farm,
Dehradun, District Dehradun. ---Petitioner.

Vs.

1. State of Uttarakhand through Secretary Education,
   Civil Secretariat, Dehradun,
2. Director of Education, Intermediate Education,
   State of Uttarakhand, Mayur Vihar, Dehradun,
3. Add. Director, Intermediate Education,
   State of Uttarakhand, Mayur Vihar, Dehradun,
4. Public Service Commission, through its Secretary,
   Haridwar,
5. Principal, Govt. Inter College, Jakhi Dagar,
   Tehri Garhwal.. ---Respondents.

Sri M.C. Pant, learned counsel fro the petitioner.
Sri H.M. Raturi, learned Standing Counsel for the State o f Uttarakhand/respondent nos. 1 to 3 & 5,
Sri B.D. Kandpal, learned counsel for Public Service Commission/respondent no. 5.

Hon'ble M.M. Ghildiyal, J.

Since the controversy, which is involved in these writ petitions, if be decided, will put consequential effect on each other, therefore; for the sake of convenience both these writ petitions have been consolidated and are being decided by a conman judgment.

Heard Sri Sudhansha Dhulia, Sr. Adv. Assisted by Sri Sudhir Singh, learned counsel for the petitioner Sri Dinesh Singh Tomar in writ petition no. 1305 (ss) 2006, Sri N.K. Papnoi-Adv. holding brief of Sri M.C. Pant, learned counsel for the petitioner Sri Chatar Singh in writ Petition no. 510(ss)2006, Sri H.M. Raturi, learned Standing Counsel for the State of Uttarakhand and Sri B.D. Kandpal, learned counsel for Public Service Commission.

The facts of the cases, in brief, are that the Public Service Commission published an advertisement dated 4th October 2003 in daily Newspapers 'Amar Ujala' and 'Dainik Jagran,' inviting application for appointment on the post of Lecturer (Male cadre) in different Govt. Inter Colleges of the State of Uttarakhand. In all 80 posts were advertised for filling up the post of Lecturer (Physics) out of which 16 posts were kept reserved for Schedule Caste candidates, 3 for Schedule Tribe candidates, 11 for Other Backward Caste candidates and 50 posts were for General Category. The educational qualification required for the posts was a Degree of Post Graduation in the subject concerned from a recognized University or any other equivalent course recognized by the Govt.

The petitioner Dinesh Singh Tomar applied for the post of Lecturer (Physics) as he holds Degree of M.Sc. (Electronics) from Delhi University, which according to the petitioner, is equivalent to the Degree of M.Sc. (Physics). A screening test was held on 26.09.2004 and result thereof was declared on 31st October 2004 in which the petitioner was declared successful. After the result of screening test was declared, interview call letters were sent to the successful candidates and the petitioner was in anticipation of the interview call letter.

When the petitioner did not receive any call letter for interview, he contacted the respondents' office where he was informed that since the petitioner is holding a Post Graduate Degree in M.Sc. Electronics and not in M.Sc. Physics, therefore his matter has been referred to the Govt. as to whether the Post Graduate Degree which he holds is equivalent to a Degree in M.Sc. Physics for being appointed on the post of Lecturer (Physics) or not? Thereafter; the petitioner moved representation before the respondents to issue call letter for appearing in the interview to be held in pursuance of screening test held on 26th September 2004 but when no heed was paid, the petitioner constrained to file writ petition no. 1026(M/S)2005 before this Court, in which this Court on 15th September 2005 has passed order that "in the meantime it is provided that the petitioner shall be invited for interview provisionally in pursuance to screening test held on 25th September 2004. The result shall be subject to the decision of the writ petition." This Court further on 19th November 2005 passed order in writ petition no. 1026 (M/S)2005 that 'in the meantime, if the petitioner has been interviewed and his result has been kept in sealed cover, the same shall be declared and

his appointment shall be subject to decision of this writ petition."

In pursuance to the Court's order, the petitioner was declared successful in the interview. On 27th March 2006 the said writ petition no. 1025(ms)2005 was disposed of directing the petitioner to move fresh representation and further, in case, the petitioner prefers representation, the same shall be disposed of within a period of six weeks thereafter giving joining to the petitioner on the post of Lecturer (Physics) in accordance with the law after taking into consideration the observation of the Delhi University. It is contended that despite moving several representation, ultimately the respondents on 4th September 2006 rejected representation of the petitioner on a single ground that since the degree of M.Sc. Electronic is not included in the U.P. Special Subordinate Education (Lecturers Grade) service Rules, 1992 (hereinafter referred to at the Service Rules), therefore the petitioner cannot be given appointment on the post of Lecturer (Physics).

While rejecting representation of petitioner Sri Tomar, the Secretary-Education has stated that though M.Sc. Electronics Degree is superior and the petitioner is also competent for teaching Physics but since the Degree of M.Sc. Electronics is not included in the Rules of 1992, the petitioner cannot be appointed on the post of Lecturer (Physics). It is contended by learned counsel for the petitioner Sri Tomar that the Kendriya Vidhyalaya Sangathan, which is an autonomous organization under the Ministry of Human Resource development Govt. of India, recognizes the Degree of M.Sc. Electronic as eligible for being appointed on the post of Lecturer (Physics) and has made advertisement (annexure no.)

16) for several post including the post of Lecturer Physics thereby prescribing qualification of M.Sc. Physics/Electronics/ Applied Physics/Nuclear Physics. The State of Uttarakhand has also started C.B.S.C. Pattern in Uttarakhand Education. Moreover the University of Delhi has also certified (annexure no.17) that M.Sc. Electronics degree holder is eligible for appointment on the post of Lecturer (Physics) in Inter Colleges. Similarly, the Universities of Agriculture of Technology Pantnagar has opined (annexure no.18) that the Degree of M.Sc. Electronics is equivalent to the Degree of M.Sc. Physics. Therefore, the candidates possessing Degree of M.Sc. Electronics are eligible for being appointed on the post of Lecturer Physics.

The respondents in writ petition no. 1305(ss)2006 have filed their counter affidavit in which they have taken stand that certain posts for Lecturer in Physics were advertised alongwith the other posts and eligibility for the candidate was post graduate Degree in the relevant subject Physics and the preferential qualification was L.T. or B.Ed. from recognized institution. Although the petitioner has also applied for the aforesaid post, but since he was not found eligible for the post of Lecturer Physics, as he has passed M.Sc. in Electronics, as such he was not called for interview. In pursuance of the Court's order in writ petition no. 1026(ms)2005, the petitioner was interviewed provisionally and his result was declared in which he was found successful for the post of Lecturer. In compliance of Courts order dated 27th March 2006 the representation filed by the petitioner was rejected vide order dated 4th September 2006 passed by the Secretary in accordance to the Provisions of U.P. Special Subordinate Educational (Lecturer) Grade Service

Rules 1996 and the instant writ petition is the counterblast to the aforesaid rejection order dated 4th September 2006.

The petitioner Chatar Singh also applied for the post of Lecturer (Physics) as he is having qualification M.Sc. Physics. The petitioner was issued roll number bearing no. 138279 and a screening test was held on 28.09.2004. The result of screening test was declared on 31st October 2004 in which the petitioner stood successful. The petitioner was called for interview and on the basis of interview an appointment letter dated 10th January 2006 was issued. In pursuance of the appointment letter, the petitioner submitted his joining report on 3rd February 2006 to the Principal, Govt. Inter College, Jakhi Dahar, Tehri Garhwal, but the Principal of the College sent the same in original to the Addl. Director, Intermediate Education, State of Uttarakhand. When the petitioner approached to the Addl. Director, he came to know that his appointment has been stayed on the basis of letter dated 25th January 2006 issued by the Public Service Commission.

The petitioner preferred representation on 31st March 2006, but for no avail. The grounds taken by the respondents declining joining of petitioner-Chatar Singh is that in the writ petition no. 1026(M/S) 2005 as directed by this Court Sri Dinesh Singh Tomar was given opportunity to appear in the interview and his result was declared subject to decision of writ petition no. 1026(M/S) 2005. It is contended that the order of this High Court do not indicate that this Court has given any direction to the respondents to stay appointment of petitioner-Chatar Singh. Further, the Post Graduate Degree of M.Sc. Electronics, which Sri Dinesh Singh Tomar holds, is not equivalent to the Degree of M.Sc. Physics, therefore there

cannot be any equality with the petitioner. It is contended that even otherwise the petitioner have a better quality point marks instead of the person who has filed writ petition no. 1026(M/S)2005 and being a Scheduled Tribe candidate has a better right in comparison to the aforesaid person.

There involves disputed question of fact, which cannot be decided in a writ petition preferred under Article 226 of the Constitution of India.

So far the Rules are concerned, Rule 5 of the Service Rules provided source of recruitment on the post of Lecturer by which 50% of the post will be filled up by direct recruitment through the Commission and remaining 50% by promotion from amongst substantively appointed Subordinate Education Service L.T. Grade Teachers who have completed 5 years' service. Rule 8 of the Rules provides that candidates for direct recruitment to the various categories of the posts in the service must possess the qualifications specified against each post in the Appendix 'B'. As per Appendix 'B' essential qualification for the post of Lecturer (Physics) is a Post Graduation Degree in the respective subject from a University established by law in India or a Degree recognized by the Govt. as equivalent thereto.

Although, this Court is refraining from commenting on the merits of the case lest it may adversely affect the petitioners' case, but keeping in view the averments made on oath by the petitioners that the petitioner Sri Dinesh Singh Tomar in writ petition no. 1305(SS)2006 is having Degree of M.Sc. Electronics and the petitioner Sri Chatar Singh n Writ petition no. 510 (SS) 2006, is having Degree of M.Sc. Physics, the Authority concerned can be directed to take decision by appointing a

panel of specialist of three members from recognized Universities on the entire controversy that either the Post Graduate Degree, which the petitioner Dinesh Singh Tomar holds, is equivalent to the Degree of M.Sc. Physics, for being appointed on the post of Lecturer (Physics) or not?

Therefore, without entering into the merits of the case, I direct the Director, Higher Education, Govt. of Uttarakhand, Dehradun to appoint a panel of specialist (of about three members including himself) from recognized Universities, to find out as to whether the Degree of M.Sc. (Electronics) is equivalent to the Degree of M.Sc. (Physics) for being appointed as Lecturer (Physics). The Director shall also procure opinion from University of Agriculture and Technology, Pantnagar (as the University is also providing degree in M. Sc. -Electronics) and shall place the same before the panel appointed by him in this matter.

After opinion of the panel is achieved and after evaluation of the opinion of G.B. Pant University of Agriculture of Technology, Pant Nagar, U.S. Nagar in this regard, the Director, Higher Education, Govt. of Uttarakhand shall pass final order in the matter of the petitioners fro being appointed on the post of Lecturer (Physics) within a reasonable period. At any rate, the whole exercised shall be completed within a period of two months from the date of production of a certified copy of this order.

With these direction, both the writ petitions are disposed of finally. No order as to costs. All the pending applications stand disposed of accordingly.

Let a certified copy of this order be placed in writ petition no. 510(ss)2006.

(M.M. Ghildiyal, J.)

August 21,2007:
NCM: